

LS-1942

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## OGC Has Reviewed

4 December 1952

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MEMORANDUM FOR: Deputy Director (Administration)

SUBJECT: [REDACTED]

- Payment of Storage

REFERENCE:

Memorandum from Chief, SE to DD/A dated 15 October 1952, subject as above.

1. The referenced memorandum requests the approval of the DD/A for the payment by the Agency of the storage charges on [REDACTED] household effects for the period from 1 September 1951 until his prospective return to the United States from [REDACTED] in October of 1953.

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2. [REDACTED] was originally hired as a contract agent on 1 September 1950 for assignment in [REDACTED]. His initial contract did not authorize transportation of household effects and [REDACTED] accordingly placed these effects in storage at an annual charge of \$360. On 1 September 1951, [REDACTED] was given a new contract providing in part, "you will also be paid for expenses incurred in the transportation of your household effects and of your personal automobile to and from your overseas post of duty...." On 18 February 1952, [REDACTED] status was changed to that of a staff agent. His household effects have remained in storage at the original annual cost of \$360. He is scheduled to depart from [REDACTED] presumably for return to the United States, in October of 1953.

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3. As a contract agent from 1 September 1950 to 18 February 1952, [REDACTED] was not "entitled to tenure, leave, or other emoluments, except as specifically stated in the contract...." [REDACTED]

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[REDACTED] rights, privileges and entitlements were, therefore, only those provided for in his contract. Prior to 1 September 1951, his contract contained nothing pertinent to transportation or storage of personal effects. On that date the substituted contract allowed him reimbursement for expenses incurred in the transportation of effects and automobile. Thereafter until 18 February 1952, if [REDACTED] had incurred such expenses he would have been entitled to reimbursement. Inasmuch as he did not, we can find no theory of express or implied contract under which there is any obligation upon this agency to pay any charges with respect to these effects either for transportation or storage. Any payment of this nature which the Agency made would be characterized as a gratuity. In this connection, see Section 82.c of Title 5 U.S.C., which provides in part:

"The officer or employee certifying a voucher shall ....(3) be held accountable for and required to make good to the United States the amount of any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certificate made by him, as well as for any payment prohibited by law or which did not represent a legal obligation under the appropriation or fund involved:...."

In the absence of a legal obligation, it is our opinion that the use of confidential funds for reimbursement of [redacted] storage charges between 1 September 1951 and 18 February 1952 would be improper without a clear demonstration that the financial burden was imposed by the peculiar requirements of this Agency. This latter aspect is hereafter discussed.

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4. On 18 February 1952, [redacted] became a staff agent and as such "entitled to substantially all privileges of a staff employee..."  
[redacted]

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[redacted]

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[redacted]  
It would not be unreasonable to suggest the propriety of a regulation that precluded shipment where transportation schedules indicated that the employee would be returning to the United States within a specified few months of the arrival of his effects. See 130, Foreign Service Travel Regulations, 3.61, with respect to time limitations within which shipment of effects must be made after the arrival of an employee overseas.

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[redacted]

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(c) It is the opinion of this office that [redacted] has only a conditioned entitlement to have the Agency ship his household effects at Government expense. Such an entitlement cannot be unilaterally transmitted into a vested right and simultaneously converted to a monetary benefit of different form, the more particularly so because the

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monetary benefit is one that may not be afforded in the absence of specific congressional authority. We believe, therefore, that a contractual arrangement between this Agency and [REDACTED] in the form proposed by the referenced memorandum would be legally objectionable. To find otherwise would deprive the Director of administrative discretion which Congress intended he should have, and would additionally permit the Agency to circumvent the normal rules for internal administration of Government. This Agency derives its authority from statute, and, although possessing extraordinary powers, has determined to adhere to law and regulations unless the efficient performance of its unusual operational functions otherwise requires.

(d) Beyond purely legal obstacles to the form of contract proposed, the Comptroller General has more than once expressed the policy consideration that contracts between the Government and its employees "should not be made except for the most cogent reasons." See 5 Comp. Gen. 93, 14 id. 403, 21 id. 705, 27 id. 736. The presence of such compelling circumstances is not clearly apparent here. It perhaps should be additionally noted that the provisions of 5 U.S.C. Section 70 prohibiting extra allowances may be applicable.

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5. Although we believe that an agreement to pay storage charges would be legally improper, the referenced memorandum presents the further question whether there is legal objection to approval by the Deputy Director (Administration) of a claim of [REDACTED] in the amount of previously incurred storage charges under the extraordinary authority of [REDACTED] of the Confidential Funds Regulations. It is not certain whether a secure method of transportation of [REDACTED] effects could have been obtained when he first became entitled to reimbursement for shipment on 1 September 1951. If the decision to allow the effects to remain in storage from 1 September 1951 until the present time was a personal election by [REDACTED] himself, influenced by the availability of suitably furnished quarters overseas, there is no clear demonstration of a personal financial burden resulting from the peculiar functions of this Agency. In such a situation, this case cannot be distinguished from that which must be frequently encountered by Government employees serving overseas in areas in which they are required to obtain private quarters which may or may not be furnished. Without further information showing that cover requirements or the operational needs of the Agency dictated that [REDACTED] leave his belongings in storage after 1 September 1951, we would consider an expenditure of confidential funds to reimburse him for these charges improper.

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General Counsel